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DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

20146

FILE: B-204013

DATE: November 30, 1981

MATTER OF: Gentiray and Associates

DIGEST:

1. Bidder's failure to acknowledge amendment increasing a Service Contract Act wage determination requires rejection of the bid as nonresponsive to a material amendment and may not be waived as a minor informality.
2. Protest filed after bid opening against allegedly inadequate time to acknowledge amendment of invitation for bids is untimely under the Bid Protest Procedures and not for consideration on the merits.

Gentiray and Associates (Gentiray) protests that its low bid should not have been rejected as non-responsive for failure to acknowledge amendment 2 under invitation for bids (IFB) No. 6P-3579 issued by the National Aeronautics and Space Administration (NASA), since the amendment would allegedly only increase one employee's wages by \$104 for a year. Gentiray also protests that there was insufficient time to acknowledge the amendment.

The protest is without merit in part and untimely in part.

Amendment 2, issued June 12, 1981, extended the bid opening date to June 23, 1981, and increased the hourly wage rate and pension contribution required to be made under the Service Contract Act, 41 U.S.C. § 351 (1976). Apparently, Gentiray failed to acknowledge amendment 2 because of some confusion. This was generated by the fact that before NASA furnished Gentiray the formal amendment, which called for acknowledgment, NASA furnished Gentiray an informational copy of the amendment. Because of certain omissions in the informational copy, Gentiray interpreted the situation as not requiring any acknowledgment of amendment 2.

We recognize that Gentiray contends that the amendment has only a trivial effect because of an alleged \$104 increase in one employee's wages for a year. However, we have held that amendments increasing Service Contract Act minimum wage requirements are material amendments because bidders are not obligated to pay the higher rates unless they acknowledge the amendments. Therefore, the failure to acknowledge the amendments renders the bids nonresponsive and cannot be waived as a minor informality. G.E. Webb, B-204436, September 21, 1981, 81-2 CPD 234; Columbus Services International, B-191070, November 13, 1978, 78-2 CPD 338; Electro-Coatings, Inc., March 10, 1978, 78-1 CPD 196; and B-176399, January 9, 1973.

Further, unless the failure of a bidder to acknowledge a material amendment is due to a conscious or deliberate effort by the contracting agency to exclude the bidder from the competition, the bid must be rejected as nonresponsive. C.E. Webb, supra. Under the circumstances of this case, even if Gentiray was confused by the duplicate issuance of amendment 2, we do not find that the failure to acknowledge the amendment was the result of any effort by NASA to specifically exclude Gentiray from the competition.

Moreover, Gentiray's protest filed after bid opening against the allegedly inadequate time to acknowledge the amendment is untimely under the Bid Protest Procedures and not for consideration on the merits. Alexandria Graphics & Reproduction Service, B-200249, October 7, 1980, 80-2 CPD 251.

Accordingly, the protest is denied in part and dismissed in part.

Milton J. Rowlin
for Comptroller General
of the United States